

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 02-0448P**

**Sales and Use Tax  
For Calendar Years 1998, 1999, and 2000**

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**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer was audited for calendar years 1998, 1999, and 2000. Upon audit it was discovered that the taxpayer failed to remit sales tax on a portion of its sales and had no evidence of exemption. In addition, taxpayer failed to self-assess use tax on a portion of its furniture, storage building, truck cleaning equipment, building maintenance materials, maintenance tools, petroleum products, lawn products, and other miscellaneous items.

Taxpayer requests abatement of the penalty due to reasonable cause.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states that it experienced tremendous growth during the audit period, that its underpayment represented an error of 7.9% of its total tax liability, that it had a self-assessment procedure in place, the liability was minimal, and that it had always filed its returns on a timely basis with no intent to defraud the state.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence

shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer failed to remit use tax on clearly taxable items. Taxpayer also had exempt sales to customers for whom no valid exemption certificate was obtained. Fuel sales were both over and under stated resulting in an assessment. These were sales of diesel fuel through metered pumps.

As a result, the taxpayer collected the sales tax on the underreported sales, which was not remitted to the Department as required under 45 IAC 2.2-7-3.

Although the total error is under ten percent (10%), the taxpayer was negligent in its duties to remit sales and use taxes.

### **FINDING**

Taxpayer’s protest is denied.